STATE OF NEW YORK
CITY COURT

COUNTY OF MONROE
CITY OF ROCHESTER

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

AFFIDAVIT

RAMONA SANTORELLI,

Defendant.

STATE OF NEW YORK)
COUNTY OF MONROE) ss.:
CITY OF ROCHESTER)

LAWRENCE L. KASPEREK, being duly sworn, deposes and says:

1. That I am a duly appointed Assistant Public Defender in and for the County of Monroe, and that I have been assigned to represent the defendant in the above-captioned matter.

2. I make this Affidavit in support of the relief requested in the annexed Notice of Motion and for such other and further relief as to this Court may seem just and proper.

STATEMENT OF FACTS

3. That, on information and belief, the defendant herein was arrested on or about June 21, 1986 in the City of Rochester and was charged therein with Exposure of a Person, pursuant to PL §245.01.

4. Shortly thereafter, the defendant was arraigned before the Honorable Herman J. Walz and entered a plea of NOT GUILTY to the above charge. The matter is currently scheduled for motions on July 8, 1986.

5. The sources and grounds for your affiant's belief are conversations between your affiant and the defendant, an investigation conducted by members on staff at the Monroe County Public Defender's Office, and the various and sundry papers filed in connection with this incident.

BILL OF PARTICULARS

6. With respect to that portion of this Motion which seeks a Bill of Particulars, I believe that I cannot adequately prepare or conduct a defense without being supplied with the following information by the District Attorney:

a. The exact date, time and place at which the crime is alleged to have occurred;

b. The name of the alleged victim. People v. Langford, 16 NY 2d 32, 261 NYS 2d 873 (1965);

c. The specific acts allegedly performed by the defendant. People v. Iannove, 45 NY2d 589, 412 NYS2d 110 (1978); People v. Schubert, 140 Misc. 689; 251 NYS 390 (1931);

d. The names of all prosecution witnesses. People v. Robinson, 75 Misc.2d 477, 347 NYS2d 860.

e. Whether the People intend to prove at trial that the defendant acted as a principal or an accomplice or both.

SANDOVAL

7. Under the authority of People v. Sandoval, 34 NY2d 371, the defendant requests that the District Attorney is precluded from asking any questions concerning the arrest record, conviction record or any prior immoral or vicious acts. Your deponent believes that the presentation of such information to the jury in this case would greatly prejudice the defendant far beyond any probative value it could possibly have. In the alternative, defendant requests a hearing as to any such evidence that the prosecution seeks to introduce at trial.

8. Under the authority of CPL Article 160.40, the defendant requests that the Court furnish her with a copy of her division of criminal justice services report so as to enable her to prepare for a Sandoval hearing.

BRADY MATERIAL

9. With respect to that portion of this Motion seeking delivery to the defendant of all evidence favorable to her or evidence which may be favorable to her, your affiant believes that the holding of the United States Supreme Court case

of Brady v. Maryland, 373 US 83, requires that the District Attorney deliver to your affiant all such potentially favorable evidence and your affiant requests that he do so.

10. Such information should include, but not be limited to:

a. Any information to the effect that all or some of the evidence which may be utilized by the People at trial was illegally or improperly obtained or was obtained even partially as the result of the improper acquisition of some other evidence;

b. Any evidence, information, testimony, transcripts or statements indicating that the defendant herein did not commit the crime(s) charged in the Information;

c. Any evidence, information, testimony, transcripts or statements indicating that any prospective prosecution witness on any occasion gave false, misleading or contradictory information regarding the charge at bar, or any related matters to persons involved in law enforcement or to their agents or informers;

d. Any evidence, information, testimony, transcripts or statements indicating that any prospective prosecution witnesses have given statements contradictory to one another;

e. Any and all information, in whatever form available, supporting the position that the defendant did not commit the crime(s) alleged in the Information.

PL §245.01 VIOLATES THE EQUAL PROTECTION CLAUSE OF ARTICLE I, §11 OF THE NEW YORK STATE CONSTITUTION

11. CPL §170.30 provides, after arraignment upon an information, the local criminal court may, upon motion of the defendant, dismiss such instrument or any count thereof upon the ground that: (a) it is defective within the meaning of CPL §170.35.

12. CPL §170.35 provides, an information or a count thereof, is defective within the meaning of paragraph (a) of subdivision one (1) of CPL §170.30 when: (c) the statute defining the offense charged is unconstitutional or otherwise invalid.

13. Section 245.01 of the New York State Penal Law, Exposure of a Person provides:

> A person is guilty of exposure if he appears in a public place in such a manner that the private or intimate parts of his body are unclothed or exposed. For purposes of this section, the private or intimate parts of a female shall include that portion of the breast which is below the top of the areola. This section shall not apply to the breastfeeding of infants or to any person entertaining or performing in a play, exhibition, show or entertainment.

14. Article I, §11 of the New York State Constitution provides in pertinent part:

> No person shall be denied the equal protection of the laws of this State or any subdivision thereof.

15. New York State Penal Law §245.01 is purposely designed to make unlawful the exposure of only a females breasts, below the top of the areola, in a public place. Such an arbitrary systematic course of discrimination, against the defendants, constitutes a denial of equal protection by favoring the actions of one class, males, over another, females.

WHEREFORE, the defendant requests an Order pursuant to CPL §170.35 and §170.30 dismissing the accusatory instrument as defective, or in the alternate, a hearing.

PL §245.01 VIOLATES THE EQUAL PROTECTION CLAUSE OF THE 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION

16. CPL §170.30 provides, after arraignment upon an information, the local criminal court may, upon motion of the defendant, dismiss such instrument or any count thereof upon the ground that: (a) it is defective within the meaning of CPL §170.35.

17. CPL §170.35 provides, an information or a count thereof, is defective within the meaning of paragraph (a) of subdivision one (1) of CPL §170.30 when: (c) the statute defining the offense charged is unconstitutional or otherwise invalid.

18. Section 245.01 of the New York State Penal Law, Exposure of a Person provides:

> A person is guilty of exposure if he appears in a public place in such a manner that the private or intimate parts of his body are unclothed or exposed. For purposes of this section, the private or intimate parts of a female person shall include that portion of the breast which is below the top of the areola. This section shall not apply to the breastfeeding of infants or to any person entertaining or performing in a play, exhibition, show or entertainment.

19. The 14th Amendment of the United States Constitution provides in pertinent part:

> No State shall . . . deny any person within its jurisdiction the equal protection of the law.

20. PL §245.01 serves only to prevent women, but not men, from baring their breasts in a public place. Such a statutory classification by sex is acceptable only where it would further an important governmental objective.

21. The State can claim no important governmental objective for this statutory classification by sex.

WHEREFORE, the defendant requests an Order pursuant to CPL §170.35 and §170.30 dismissing the information as defective, or in the alternative, a hearing.

PL §245.01 IS CONSTITUTIONALLY VOID AS VAGUE AND OVERBROAD

PURSUANT TO ARTICLE I §6 AND §8 OF THE

NEW YORK STATE CONSTITUTION

22. CPL §170.30 provides, after arraignment upon an information, the local criminal court may, upon motion of the defendant, dismiss such instrument or any count thereof upon the ground that: (a) it is defective within the meaning of CPL §170.35.

23. CPL §170.35 provides, an information or a count thereof, is defective within the meaning of paragraph (a) of subdivision one (1) of CPL §170.30 when: (c) the statute defining the offense charged is unconstitutional or otherwise invalid.

24. Section 245.01 of the New York State Penal Law, Exposure of a Person provides:

> A person is guilty of exposure if he appears in a public place in such a manner that the private or intimate parts of his body are unclothed or exposed. For purposes of this section, the private or intimate parts of a female person shall include that portion of the breast which is below the top of the areola. This section shall not apply to the breastfeeding of infants or to any person entertaining or performing in a play, exhibition, show or entertainment.

25. Article I, §6 of the New York State Constitution provides in part:

> No person shall be denied of life, liberty or property without due process of law.

26. Nothing less than adequate warning of what the law requires will do, to assume that citizens can conform their conduct to the dictates of the law. People v. New York Trap Roch Corp., 57 NY 2d 371 (1982).

27. PL §245.01 as drawn is unconstitutionally vague, and fails to therefore provide the defendant with sufficient notice to distinguish patently criminal from permissible behavior.

28. In particular, the terms; "This section shall not apply to the breastfeeding of infants or to any person entertaining or performing in a play, exhibition, show or entertainment" are insufficient to advise a person of acceptable conduct.

29. PL §245.01 is overbroad and has the chilling effect of prior restrain on traditionally protected rights of speech and expression in Article I §6 of the New York State Constitution.

30. The Statute only excepts live entertainment and breastfeeding from proscribed criminal conduct, at risk is traditionally protected conduct which may be political, educational, scientific, religious or artistic. The Statute is also intrusive to individual lifestyle, dress, exercise and morals.

WHEREFORE, the defendant requests an Order, pursuant to CPL §170.35 and §170.30, dismissing the accusatory instrument as defective, or in the alternative, a hearing.

PL §245.01 IS CONSTITUTIONALLY VOID AS VAGUE AND OVERBROAD PURSUANT TO THE FIRST, FIFTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION

31. CPL §170.30 provides, after arraignment upon an information, the criminal court may, upon motion of the defendant, dismiss such instrument or any count thereof upon the ground that: (a) it is defective within the meaning of CPL §170.35.

32. CPL §170.35 provides, an information or a count thereof, is defective within the meaning of paragraph (a) of subdivision one (1) of CPL §170.30 when: (c) the Statute defining the offense charged is unconstitutional or otherwise invalid.

33. Section 245.01 of the New York State Penal Law, Exposure of a Person provides:

A person is guilty of exposure if he appears in a public place in such a manner that the private or intimate parts of his body are unclothed or exposed. For purposes of this section, the private or intimate parts of a female person shall include that portion of the breast which is below the top of the areola. This section shall not apply to the breastfeeding of infants or to any person entertaining or performing in a play, exhibition, show or entertainment.

34. The Fifth Amendment provides in part:

No person shall be . . . denied of life, liberty or property without due process of law.

35. It is an essential element of due process of law that no person shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed. United States v. Hariss, 347 US 612, 74 S.Ct. 808, 98 L.ED 989.

36. These constitutional protections, concepts of free speech and due process apply to the defendant within the meaning of the Fourteenth Amendment which provides:

No State shall make or enforce any law which shall . . . deprive any person of life, liberty or property without due process of law.

37. The Statute as drawn is unconstitutionally vague, and fails therefore to provide the defendant with sufficient notice to distinguish patently criminal from permissible behavior.

38. In particular, the terms "This section shall not apply to the breastfeeding of infants or to any person entertaining or performing in a play, exhibition, show or entertainment" are insufficient to advise a person of acceptable conduct.

39. PL §245.01 is overbroad and has the chilling effect of prior restrain on traditionally protected First Amendment conduct, in that it only excepts live entertainment and breastfeeding from proscribed criminal conduct. At risk is traditionally protected conduct which may be political, educational, religous, scientific, or artistic. The Statute is also intrusive to individual lifestyle, dress, exercise and morals.

WHEREFORE, the defendant requests an Order pursuant to CPL §170.35 and §170.30 dismissing the accusatory instrument as defective or in the alternative a hearing.

PL §245.01 IS AN IMPERMISSIBLE INTRUSION INTO RIGHTS PROTECTED BY ARTICLE I §8 OF THE NEW YORK STATE CONSTITUTION

40. CPL §170.30 provides, after arraignment upon an information, the local criminal court may, upon motion of the defendant, dismiss such instrument or count thereof upon the ground that: (a) it is defective within the meaning of CPL §170.35.

41. CPL §170.35 provides, an information or a count thereof, is defective within the meaning of paragraph (a) of subdivision one (1) of CPL §170.30 when: (c) the Statute defining the offense charged is unconstitutional or otherwise invalid.

42. Article I §8 of the New York State Constitution provides in pertinent part:

> No law shall be passed to restrain or abridge liberty of speech or of the press.

43. Section 245.01 of the New York State Penal Law, Exposure of a Person provides:

> A person is guilty of exposure if he appears in a public place in such a manner that the private parts of his body are unclothed or exposed. For purposes of this section, the private or intimate parts of a female person shall include that portion of the breast which is below the top of the areola. This section shall not apply to the breastfeeding of infants or to any person entertaining or performing in a play, exhibition, show or entertainment.

44. PL §245.01 purports to restrain the free dissemination of information, communication and ideas, and penalizes only women who bare their breasts, but not men, in the exercise of such liberty.

45. Absent a compelling State interest to justify the restriction of such constitutionally protected rights, the regulation is void.

WHEREFORE, the defendant requests an Order pursuant to CPL §170.35 and §170.30, dismissing the accusatory instrument as defective, or in the alternative, a hearing.

PL §245.01 IS AN IMPERMISSIBLE INTRUSION INTO FREE EXPRESSION PROTECTED BY THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION

46. CPL §170.30 provides, after arraignment upon an information, the local criminal court may, upon motion of the defendant, dismiss such information or any count thereof upon the ground that: (a) it is defective within the meaning of CPL §170.35.

47. CPL §170.35 provides, an information or a count thereof, is defective within the meaning of paragraph (a) of subdivision one (1) of CPL §170.30 when: (c) the Statute defining the offense charged is unconstitutional or otherwise invalid.

48. The First Amendment of the United States Constitution provides in part:

> Congress shall make no law . . . abridging the freedom of speech.

49. Section 245.01 of the New York State Penal Law, Exposure of a Person provides:

> A person is guilty of exposure if he appears in a public place in such a manner that the private or intimate parts of his body are unclothed or exposed. For purposes of this section, the private or intimate parts of a female person shall include that portion of the breast which is below the top of the areola. This section shall not apply to the breastfeeding of infants or to any person entertaining or performing in a play, exhibition, show or entertainment.

50. PL §245.01 purports to restrain the free dissemination of information, communication and ideas, and penalizes only women who bare their breasts, but not men, in the exercise of such liberty.

51. Absent a compelling State interest to justify the restriction of such constitutionally protected rights, the regulation is void.

WHEREFORE, the defendant requests an Order pursuant to CPL §170.35 and §170.30, dismissing the accusatory instrument as defective, or in the alternative, a hearing.

PL §245.01 IS AN IMPERMISSIBLE INTRUSION INTO

FUNDAMENTAL RIGHTS PROTECTED BY THE

NINTH AMENDMENT OF THE UNITES STATES CONSTITUTION

52. CPL §170.30 provides, after arraignment upon an information, the local criminal court may, upon motion of the defendant, dismiss such instrument or any count thereof upon the ground that: (a) it is defective within the meaning of CPL §170.35.

53. CPL §170.35 provides, an information or a count thereof, is defective within the meaning of paragraph (a) of subdivision one (1) of CPL §170.30 when: (c) the Statute defining the offense charged is unconstitutional or otherwise invalid.

54. The Ninth Amendment of the United States Constitution provides in its entirety:

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparge others retained by the people.

55. PL §245.01 holds women criminally responsible for baring their breasts in public, while identical acts or conduct of any man is excused from any illegality.

56. Lifestyle, dress, morals, exercise, and philosophy are unenumerated expressions of fundamental human rights protected by the Ninth Amendment as retained by the people.

57. Absent a compelling State interest in restricting such constitutionally protected rights, the regulation is void.

WHEREFORE, the defendant requests an Order pursuant to CPL §170.35 and §170.30 dismissing the accusatory instrument as defective, or in the alternative, a hearing.

LEAVE TO MAKE FURTHER MOTIONS

58. The defense has endeavored to encompass within this Omnibus Motion, all possible pre-trial prayers for relief. Your affiant respectfully requests that this

Court grant leave to apply for such further and future relief as may be deemed justified, should the facts and circumstances not now within your affiant's knowledge indicate that such additional motions are warranted.

WHEREFORE, your affiant respectfully prays that this Court grant the relief requested, as well as such other and further relief as to this Court may seem just and proper.

Lawrence Kasperek

LAWRENCE L. KASPEREK

Sworn to before me this

7th day of July, 1986.

Ann M Bianchi

ANN M. BIANCHI Comm. of Deeds

My commission expires January 29, 1987